2018 IL App (1st) 170723-U

Order filed September 18, 2018.

Second Division

No. 1-17-0723

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re MARRIAGE OF CAREN YUSEM,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
v.	)	No. 09 D 4177
	)	
ALAN DRIMMER,	)	The Honorable
	)	Mark Lopez,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Petitioner failed to show the trial court's award of statutory interest was insufficient. The court properly modified the unallocated support award based on a substantial change in circumstances and properly denied petitioner's motion to reopen proofs. In addition, the court did not abuse its discretion by awarding respondent, rather than petitioner, statutory attorney fees. Finally, the court properly ordered petitioner to contribute to bat mitzvah expenses.

¶ 2 This appeal arises from the trial court's resolution of several post-dissolution of marriage disputes between Caren Yusem and her former spouse, Alan Drimmer. On appeal, Caren challenges (1) the court's award of statutory interest, which she argues was inadequate, (2) its

modification of unallocated support, (3) its refusal to reopen proofs, (4) its award of attorney fees in Alan's favor, and (5) its determination that Caren must contribute to their daughter's bat mitzvah expenses. We affirm the trial court's judgment.

¶ 3 I. Background

¶ 4 A. The Dissolution of Marriage

¶ 5 The parties married in January 1993.[1] On July 8, 2010, the trial court entered a judgment dissolving the parties' marriage. That judgment included a marital settlement agreement (MSA) and a custody and joint parenting agreement (custody agreement). At that time, their son M.D. was 14 years old and their daughter C.D. was 10 years old.

¶ 6 i. Unallocated Support

¶ 7 Paragraph 2(a) of the MSA stated that Alan would pay Caren "unallocated child support and maintenance for the support of CAREN and the parties' children [in] an amount equal to 50% of ALAN'S *gross income* (not including bonus) less an amount equal to 50% of CAREN's gross income, divided by twelve, to be calculated in accordance with paragraph [2(g)] below." (Emphasis added.) Monthly unallocated support payments under paragraph 2(a) were to be made on the fifteenth day of each month.

¶ 8 Paragraph 2(b) governed unallocated support from bonuses: Alan would pay Caren 50% of any *gross bonus*, within seven days of Alan receiving it. Thus, while monthly unallocated support payments were due on the fifteenth of each month, unallocated support payments in the form of bonuses were due within seven days of Alan's receipt. Paragraph 2(c) essentially added

[1] A party's statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h) (7) (eff. May 25, 2018). Caren's statement of facts includes a selective recitation of the facts and inappropriate argument, in violation of Rule 341.

that, at the latest, unallocated support payments would end in July 2016, at which point future child support payments would be determined under paragraph 2(d).

¶ 9 Paragraph 2(g), titled "Calculation of Unallocated Support and 'True Up' of Income," stated:

> "(i) ALAN shall use the current amount of CAREN's gross unemployment benefits or income provided for in paragraph 2(g) (iv) per month to calculate the unallocated support amount to be paid *per month*, pursuant to paragraph 2(a) above.
>
> * * *
>
> (iv) Beginning in the year 2011, the parties shall furnish one another before May 1 of each year copies of their federal and state income tax returns and schedules for the prior year. *Monthly unallocated* child support and maintenance (*not including bonus*) shall be *calculated for the following twelve months* beginning July 15 by subtracting CAREN's gross income from salary and business income (business income shall be calculated as total income less reasonable unreimbursed business expenses) for the preceding year from ALAN's *gross income from salary and business income* (business income shall be calculated as total income less reasonable unreimbursed business expenses) for the same time period and dividing by twelve. Any over or under payments made and/or received shall be reimbursed to the other party by July 30 of each year." (Emphases added.)

We note that while paragraph 2(g)'s title generally referred to "unallocated support," its provisions pertained to *monthly* unallocated support payments based on income, not unallocated support payments based on bonuses. We also observe that determining the amount of monthly payments required examining both spouses' income from the prior year.

¶ 10 ii. The Children's Expenses

¶ 11 Paragraph 3(a) of the MSA essentially stated that the parties would each pay for one-half of the children's expenses for school, extra-curricular activities and other non-medical items. Paragraph 3(b) added:

> "[T]he purpose/intent behind providing the parties with equal income, is to insure the children are able to maintain their current participation in private school and extra-curricular activities and other child related expenses as they have been accustomed to during the marriage. Neither CAREN nor ALAN shall incur any expense for which either expects payment from the other without the express written permission of the other to incur such expense."

In addition, paragraph 3(e) required the parties to pay one-half of medical bills not covered by insurance but also stated that the parties "shall obtain each other's agreement before incurring expenses for any extraordinary conditions, except in cases of emergency, when contacting the other parent is not reasonably possible[.]" The agreement defined "extraordinary" to include "all major orthodontic" expenses but to exclude "routine" orthodontic expenses. Under paragraph 3(f), the parties' responsibility for future college expenses would be determined later.

¶ 12 iii. The Custody Agreement

¶ 13 The custody agreement granted the parties equal custody and required them to "consult with and thoughtfully consider the equal input of the other as to all important matters relating to the health care, religion, education, activities, parenting philosophies, child care and extracurricular involvements of [C.D.] and [M.D.] prior to a decision being made." To that end, they acknowledged "that respectful, timely communication is an essential component of an

effective decision making process." The parties would "endeavor to respond" to communications within 72 hours.

¶ 14 B. Post-Dissolution Disputes Arise

¶ 15 In 2012, the parties performed a true up for July 2010 to July 2011. Their relationship quickly deteriorated, however. According to Alan's later testimony, no other true up occurred because Caren was unwilling to participate. In 2013, Alan filed a petition to find her in contempt, a motion to enforce the dissolution judgment and a motion to modify the judgment due to a substantial change in circumstances. He alleged that Caren failed to pay her half of expenses, had a practice of arbitrarily refusing to give her consent and refused to gain meaningful employment. Additionally, Alan wanted to establish the parties' obligations for M.D.'s college expenses and sought an order requiring Caren to pay $10,584 toward C.D.'s bat mitzvah expenses.

¶ 16 In 2014, Caren petitioned for a rule to show cause why Alan should not be held in contempt for failing to share 50% of his income with her. Alan responded that the additional income Caren claimed he failed to share was income from the vesting of restricted stock units (RSUs), which Alan believed the court had determined was non-marital property, rather than income subject to unallocated support. He also stated that Caren refused to conduct a true up in 2013.

¶ 17 Caren subsequently filed another contempt petition based on Alan's alleged failure to tender half of a $178,946 "bonus" he received from his employer. Additionally, she filed a motion for a declaratory judgment and a complaint for breach of contract based on Alan's failure to tender her half of his cash retention awards and RSU proceeds. We note that her pleading refers to these proceeds as both bonuses and income, blurring the MSA's distinction between the two.

¶ 18 C. RSU Proceeds and Cash Retention Awards

¶ 19 On December 2, 2014, a hearing was held on Caren's request that Alan be required to share additional sums with her as unallocated support. At the outset, Caren's attorney clarified that "what would continue on at trial next week would essentially be a hearing, in part, on her damages or the money that she would be owed if the court agreed with our argument and analysis of the [MSA], as we put it in the Declaratory Judgment." Thus, Caren apparently agreed that the amounts due would not be established until a later date. The court agreed as well, finding the amounts due involved a factual dispute.

¶ 20 During this hearing, Caren's attorney argued that Alan had to share proceeds from both RSUs and cash retention awards. That being said, counsel's arguments, like Caren's pleadings, blurred the MSA's distinction between unallocated support from bonuses and monthly unallocated support payments based on income. Alan's attorney maintained that those proceeds were unrelated to his work performance and were neither bonus nor income. He stated that the parties' sole true up showed they did not consider those sums to be part of the unallocated support award.[2]

¶ 21 Following arguments, the court addressed the MSA's provisions pertaining to income and monthly unallocated support payments: paragraphs 2(a) and 2(g). The court noted that paragraph 2(a) referred to Alan's "gross income," and paragraph 2(g) referred to his "gross income from salary and business income." While each paragraph was unambiguous standing alone, their terminology differed. Despite that discrepancy, the court found that "business income" included cash retention awards and RSU proceeds, requiring Alan to pay Caren half of those funds.

¶ 22 D. The Evidentiary Hearing

[2] Alan's attorney further noted that neither he nor Caren's present attorney were the lawyers responsible for the poorly drafted MSA.

¶ 23 A six-day evidentiary hearing on the remaining issues occurred between December 2014 and July 2015. The evidence included the testimony of Alan and Caren, and numerous exhibits.

¶ 24 i. Parental Communications and Expenses

¶ 25 Alan's testimony and supporting documents generally showed that he would e-mail Caren a list of the children's incurred expenses, which he recorded in great detail, down to a $2.38 Starbucks charge. He would also e-mail her regarding upcoming bills or reimbursement requests. Alan identified numerous e-mails that Caren did not respond to, however. She also refused to contribute to certain expenses. While Caren testified that she "paid for a lot of medical expenses," her appellate brief has not identified where an itemized list of those medical expenses can be found. It is undisputed that in 2013, she contributed $43,146 toward school tuition.

¶ 26 In May 2011, Caren told Alan she could not commit to C.D. getting braces until Caren's disputes with Alan were settled and she could budget properly.[3] That same month, she paid $1,900 for a dating service. Caren testified that she did not know C.D. needed braces but then acknowledged her pre-dissolution disclosure showed she was aware that C.D.'s orthodontic expenses would be $250 a month. When Alan told Caren that C.D.'s pediatrician recommended she see an orthopedic doctor for a painful neck injury, Caren responded, "I do not agree to such extraordinary care unless it can be fully reimbursed in accordance with 3(d)," which spoke to the parties' obligation to provide medical insurance.

¶ 27 C.D. turned 13 years old in August 2012, but her bat mitzvah did not occur until she was 14 years old. Alan testified that this was because Caren refused to agree to any preparations. When M.D. had turned 13 years old, he had a bar mitzvah that included tutoring, a ceremony, a family trip and a party in Israel. According to Caren, some of those expenses were incurred over

[3] Caren did not receive $98,875.78 for her share of the couple's Astor Street property until November 2013.

her objection. Alan testified that they spent about $30,000 to organize M.D.'s bar mitzvah. Furthermore, the parties' e-mails regarding C.D.'s bat mitzvah reflect Caren's unresponsiveness and lack of cooperation.

¶ 28 In February 2013, Caren stated, "I am not in agreement about throwing a party for [C.D.'s] bat mitzvah, given financial constraints that emphasize academic and cultural education for both children." She then suggested "compartmentalizing" their efforts. Caren volunteered to take on certain school-related matters and told Alan to "take care of organizing the tutoring and other events for the bat mitzvah ceremony. We will discuss my participation in the ceremony based on [C.D.'s] desires when we meet again."

¶ 29 The next month, Caren cancelled C.D.'s Hebrew lesson, telling Alan that C.D. did not understand how to take the train and that lessons were too much pressure for her in light of other activities. Caren added, "I do not have the time or resources right now to drive [C.D.] 2 to 3 times a week up north," referring to C.D.'s meetings with the rabbi. At that time, in March 2013, Caren was unemployed. She also joined the East Bank Club that month.

¶ 30 Despite putting Alan in charge of bat mitzvah planning, in October 2013, Caren stated, "Alan, Per the terms of the contract, I plan the bat mitzvah together with you. The clause is not conditional on payment nor congregant [*sic*]." She also quoted from the custody agreement, which stated that the parties were to "plan and celebrate" C.D.'s bat mitzvah together. Caren apparently wanted to plan, but not pay for, the bat mitzvah. As of November 14, 2013, she had $206,000 in her Charles Schwab account but did not offer to contribute to the bat mitzvah party. That being said, her father paid for her family's dinners. She tried to pay the synagogue but it had already been paid.

¶ 31 The parties also disagreed on whether M.D. should attend Stanford University. Caren objected to his attendance because she did not have the savings or assets to pay $75,000 a year and M.D. would likely pursue a graduate degree too. Additionally, C.D. would soon attend college. Caren ultimately consented on the condition that her contribution was limited to the cost of attending the University of Illinois at Urbana-Champaign. M.D. did go to Stanford but his parents did not agree on financial responsibility. Alan paid for one quarter of M.D.'s tuition and living expenses but Caren paid nothing. As of June 2015, M.D. owed Stanford approximately $46,000 and his enrollment was in jeopardy.

¶ 32 Caren's own expenses were explored at the hearing. As the court would later find, her testimony was often evasive and defensive. After the divorce, she had decreased her monthly rent by moving to a 950-square-foot rental. She and C.D. had separate beds in the bedroom and M.D. slept in the living room. In addition, Caren travelled extensively over the years since the dissolution judgment was entered, sometimes for business and sometimes for pleasure. While she or her employer paid for some of those travel expenses, Robert Stern, to whom she would later become engaged, also paid for some.[4] Caren acknowledged that she spent $3,606.28 on clothing at Barneys in June 2015, but testified that she returned most of it. As of July 27, 2015, she owed the Internal Revenue Service $6,000. Caren testified that as an independent contractor, she was responsible for paying taxes from her own funds.

¶ 33 ii. Employment and Finances

¶ 34 Shortly before the marriage was dissolved, Caren lost her position as the executive director of marketing and public affairs at the Art Institute of Chicago. She began looking for similar positions but the economy was poor and she was unable to find employment in Illinois.

[4] Alan also traveled with his children, new step children and new wife, in whose home Alan was living.

Caren testified that from 2009 to 2011, she worked 30 to 40 hours per week without compensation for Inside Out, a clothing company she started. Caren, who already had a master's degree, then began a program for a master's of intellectual property markets and management in August 2012. She devoted 40 to 50 hours a week to her studies and pursued that degree through a student loan, a scholarship and payments from her Charles Schwab account. She also made student loan payments from that account. Although Caren testified that she deposited no earnings into that account in 2013, that account happened to contain Alan's unallocated support payments.[5] The average ending monthly balance for her account in 2013 was $49,357.68.

¶ 35 Caren obtained a commission-based position with Open Invention Network toward the end of 2013. Her 2013 tax returns showed taxable income of $2,336 from that company. In 2014, she had a total of $15,200 in taxable income from Open Invention Network and a commission position with Brandstock Group. She acknowledged that during the period of July to November 2014, she was satisfying all recurring monthly expenses and still had substantial balances on deposit at the end of every month. In October 2014, Thomson Reuters hired Caren to do a series of webinars and conferences on the patent system, a contract she could not have obtained without her new degree. She began receiving payments from that contract in 2015.

¶ 36 Alan was the chief academic officer for Apollo Education Group, which owned the University of Phoenix and several other schools worldwide. He traveled to Phoenix every other week and made one international trip per quarter. Including travel, he worked about 70 hours per week and his base salary was $341,993. In 2014, he received a bonus of $221,151.12 and shared half of it with Caren. Alan also received $ 37,500 from special cash retention awards that year but did not share it. Additionally, Alan indicated that restricted stock awards and cash retention

[5] She deposited no earnings in 2012 and only $11,214 from unemployment income in 2011.

awards were conditional and were not recurring income to rely on. Moreover, Alan explained the multi-step process for liquidating RSUs.

Alan testified that he accessed RSU funds every year but did not share them with Caren because he thought they were dealt with in the division of property.

¶ 37 E. The May 3, 2016, Order

¶ 38 On May 3, 2016, 10 months after this cumbersome evidentiary hearing concluded, the trial court found that several substantial changes in circumstances had occurred: M.D. was emancipated, C.D. was now attending public school instead of private school and Caren was earning approximately $8,000 per month. Caren's bad faith in contributing to her children's expenses, however, was also a substantial change in circumstances, one that warranted modifying her contributions to expenses going forward and retroactively setting separate amounts of child support and maintenance, effective June 30, 2014.

¶ 39 The provision governing the calculation of monthly unallocated support created a reasonable inference that the parties expected Caren to obtain employment. The court stated, "rather than obtaining full time employment commensurate with her experience and work history, Caren elected to return to school to further her own education and also attempted a startup company in a field she had no experience [in,] which earned no income." The court found she paid for her second master's degree with unallocated support payments and her testimony was "self-serving and not credible" regarding efforts to find employment.

¶ 40 While the dissolution judgment required the parties to equally share the children's expenses, Caren took "full advantage" of the clause requiring her prior written consent, asserting it as an absolute defense to "having to contribute one dime toward child related expenses no matter how minor or reasonable they may be." Additionally, "virtually all of Alan's efforts to

obtain written consent from Caren for the child related expenses were met with silence, evasive responses and anything but any agreement." She gave ambiguous responses which were neither clear approvals nor clear refusals of his requests. Her practice of ignoring or evading reasonable requests disregarded the MSA's intent for the children to maintain their lifestyle. The court stated, "Caren did not care what the nature of the expense was and simply engaged in a course of conduct to thwart any efforts by Alan to joint parent and reach consensus on child related expenses." Caren's practice also guaranteed litigation. Furthermore, she had disregarded her children's financial and emotional well-being and put her own financial needs first, violating the spirit of the custody agreement. While Caren had paid certain private school expenses, she had otherwise "paid virtually none of the child-related expenses."

¶ 41 The court found that Alan's failure to tender half of his full income, which was in excess of $600,000, did not excuse Caren's lack of contribution and found her contrary position was absurd, unreasonable and taken in bad faith. She did not even realize that Alan's payments were insufficient until 2013. Furthermore, she had received more than $1 million in unallocated support from Alan and had her own income and assets as well as resources from her parents. Caren's approach allowed her to keep her earnings, the unallocated support and her half of the marital assets and "thumb her nose at her children's financial needs." The court stated, "Caren chooses to focus on what she believes Alan failed to pay her and nothing else." Based on the parties' demeanor, Alan was more credible "by far."

¶ 42 The court granted Alan the sole decision making power as to C.D.'s future expenses and reduced Caren's expense contribution to 20%. In addition, the court set monthly child support payments to Caren at $3,000 and maintenance payments at $2,500. The latter would end in July 2016. Additionally, the court ordered Caren to contribute to C.D.'s bat mitzvah expenses, which

were reasonable considering M.D.'s bar mitzvah expenses. That said, the court denied Alan's request for contribution to extraordinary orthodontic expenses because, despite his efforts, he did not obtain prior written consent. The court then ordered Caren to pay her 50% share of $4,938.48 in ordinary medical and dental expenses. The court also adhered to the recent statutory amendment limiting college fees to those required to attend the University of Illinois at Urbana-Champaign: $32,652. See 750 ILCS 5/513(d) (West 2016).[6]

¶ 43 The trial court denied both parties' contempt petitions. With respect to Alan, his belief that RSU proceeds were not income was reasonable, albeit incorrect. Additionally, he was to pay Caren an additional $370,175.25 in unallocated maintenance.[7] The court concluded, "Alan shall pay this sum less credits he was awarded in this order within 90 days of entry of the final and appealable order in this cause. Failure to pay in full in said time frame shall result in statutory interest being imposed and entry of a judgment against Alan." In a later order, the court clarified that judgment interest at 9% per annum would begin accruing on May 3, 2016.

¶ 44 The May 2016 order then addressed sanctions: "this trial was one of the more painful and unnecessarily prolonged in this court's sixteen years on the bench." The court found Caren's bad faith conduct "resulted in an unnecessarily extended evidentiary hearing which the court finds was precipitated for an improper purpose, needlessly increased the cost of litigation and [was] done, in part to harass Alan." The court granted Alan leave to file a fee petition under section 508(b) of llinois Marriage and Dissolution of Marriage Act (IMDMA) (750 ILCS 5/508(b) (West 2012)).

[6] Alan was responsible for 65% of that sum while Caren was responsible 35%. Additional contributions to Stanford tuition would be voluntary.

[7] We note that this part of the order refers to RSUs but not cash retention awards, notwithstanding that the prior order seemed to have referred to both.

¶ 45 F. Post-Ruling Proceedings

¶ 46 After the court's ruling, Caren filed a motion to reconsider. She argued, in pertinent part, that the court used outdated information in light of the time that passed between the evidentiary hearing and the court's ruling. She asked the court to reopen proofs to present evidence of the parties' most recent financial circumstances. According to Caren, the court also failed to award her appropriate statutory interest on overdue unallocated support payments. She further argued that the court improperly invited Alan to seek fees under section 508(b), instead of awarding her those fees.

¶ 47 The trial court largely denied Caren's motion to reconsider. The court also denied her motion to reopen proofs, stating, "life goes on after proofs are closed. That's in every case." The court added that the parties needed finality in this round of litigation and that Caren could always pursue a new motion to modify support. After credits and statutory interest were applied, Alan owed Caren $76,826.39.

¶ 48 The court then addressed Caren's challenge to Alan's section 508(b) fee petition:

> "[W]hen I have a litigant who, as counsel pointed out, simply refuses to respond in any way when a reasonable request is made, you guarantee additional litigation. When we get to trial on these causes, which as far as I consider is caused basically because your client wouldn't give him a simple yes or no answer on reasonable requests, we get the same stuff on the witness stand.
>
> Well, I don't remember. I need to see paper on that. She seemed to have a pretty good memory when her own attorney was asking questions. I've done this for a few years now. I have a pretty good idea where to assess credibility.
>
> And all of that kind[s] of actions guarantee more litigation."

The court clarified that it would separate Caren's good faith conduct from her bath faith conduct in awarding fees and ultimately awarded Alan $32,000 in attorney fees under section 508(b).

¶ 49 II. Analysis

¶ 50 A. Statutory Interest

¶ 51 On appeal, Caren first argues that the court erred in holding that statutory interest on unpaid unallocated support did not begin to accrue until the court entered its order on May 3, 2016, the order that determined proceeds from RSUs were income to be shared as unallocated support. Yet, Caren's appellant's brief has not specified when she believes interest did begin to accrue.

¶ 52 Illinois Supreme Court Rule 341(h) (7) (eff. May 25, 2018) requires that arguments contain the reasons for the appellant's contentions, supported by citations to legal authority and the record. Reviewing courts are entitled to clearly defined issues supported by pertinent authority and cohesive arguments. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5. Ill-defined and insufficiently presented issues are forfeited. *Id*. ¶ 6. Given the state of Caren's analysis, we find this issue was forfeited. Forfeiture aside, Caren has not shown that error occurred.

¶ 53 Several provisions of the IMDMA and the Illinois Code of Civil Procedure (the Code) govern interest on unallocated support, maintenance and child support. 750 ILCS 5/5-504(b-5), (b-7) (West 2010); 750 ILCS 5/505(b) (West 2010); 735 ILCS 5/12-109 (West 2010); 735 ILCS 5/2-1303 (West 2010). Caren has cited them all but fails to explain how they relate to one another. As Alan's brief states, "very little is set forth in Caren's two-page claim of error, other than disjointed citation to a series of statutory provisions and two decisions, all untethered to any

explanation of the particular connection between these items and her challenge to the Circuit Court's ruling."

¶ 54 Suffice it to say, this court has held that under the plain language of section 12-109 of the Code and section 505 of the IMDMA, interest accrues under section 2-1303 of the Code 30 days after a missed support payment's original due date. *In re Marriage of Thompson*, 357 Ill. App. 3d 854, 861 (2005). Furthermore, section 2-1303 provides an interest rate of 9% per annum. 735 ILCS 5/2-1303 (West 2010).

¶ 55 Caren's argument on appeal focuses on the mandatory nature of the aforementioned statutes. Yet, no one disputes that the aforementioned statutes are mandatory. The crucial matter is determining *when* a given payment became overdue. That determination depends on whether the proceeds at issue were income or bonus, a distinction that Caren continues to overlook.

¶ 56 At the hearing on Caren's motion for a declaration that Alan owed her additional sums, her attorney stated that the MSA's due dates did not have "any impact on determining the total amount that's owed," foregoing any attempt to establish when interest started accruing. As stated, Caren's opening brief sheds no light on when she believes any given payment came due. Alan responds, "[p]iecing together the disparate strings of [Caren's] vague claim, it appears Caren is arguing that *** interest on Alan's 'unpaid support' *** began sometime in 2011." In reply, Caren states that the MSA explicitly required Alan to pay her 50% of any additional income within seven days of receipt, relying on paragraph 2(b). Yet, the seven-day time frame in paragraph 2(b) applies to *bonuses*. In contrast, the court found that the additional sums Alan owed Caren were not bonuses, but *income*, subject to monthly unallocated support under paragraph 2(a) and paragraph 2(g).[8]

[8] Even if Caren properly treated those sums as bonuses, she did not specify when Alan received them.

¶ 57 Before the trial court, Alan suggested that the sums at issue never became due absent the true ups required by paragraph 2(g). Caren's attorney stated, "[t]he True-up defense, I don't think, impacts the ultimate amount of money that Caren was owed." Similarly, Caren contends on appeal that Alan was at all times aware of the amount he owed her because the MSA had required him to pay her half of the RSU proceeds and those proceeds were within his control. Yet, Caren continues to overlook that under paragraph 2(g), Alan's "income" could only impact the monthly payments due the following year and only after considering Caren's income as well. This determination required a true up. Only then would Alan's additional sums impact the amount of his monthly payments. That never happened, however.

¶ 58 Alan states that he had no way of knowing the additional amount due, $370,175.25, until the order was entered on May 3, 2016. See C*arter v. Kirk*, 256 Ill. App. 3d 938, 946 (1993) (stating that to award interest on a money judgment, *the amount owed must be certain* and the judgment debtor must have enjoyed use of the money during the period for which interest is awarded); see also *Rosenbaum v. Rosenbaum*, 94 Ill. App. 3d 352, 356- 57 (1981) (stating that a judgment debtor cannot halt the accrual of interest until the amount owed is determined and the judgment is paid). Additionally, on December 2, 2014, both the court and Caren's attorney contemplated that the court would identify the amount due at a later date.

¶ 59 Appellate courts begin with the presumption that the circuit court's ruling conformed with the law and facts before it. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 15. The burden of overcoming that presumption rests on the appellant. *Id*. Caren has not overcome that burden.

¶ 60 To the extent Caren argues in her reply brief that the court erred by applying credits to Alan's arrearage before assessing interest, she failed to raise that contention in her opening brief. Consequently, that too is forfeited. Ill. S. Ct. R. 341(h) (7) (eff. May 25, 2018).

¶ 61 B. Modification

¶ 62 Next, Caren asserts the court improperly modified the unallocated support award. She argues that "bad faith" cannot constitute a "substantial change" for modifying maintenance under the IMDMA and that, in any event, she did not act in bad faith.

¶ 63 Initially, we find that Caren's opening brief blatantly misrepresents the court's findings. She first states that the court identified *only* her supposed bad faith as a substantial change justifying modification and later disingenuously states that "[e]ven if additional modification bases can be *extrapolated* from the court's order, none of them supported eviscerating Caren's unallocated support." (Emphasis added.) No extrapolation is required, as the court unequivocally found there were substantial changes based on M.D.'s emancipation, C.D. attending public high school, Caren earning approximately $8,000 per month and Caren's bad faith in contributing to her children's expenses. We admonish counsel to avoid such misrepresentations in the future.

¶ 64 We review the court's modification of support for an abuse of discretion. See *In re Marriage of Heroy*, 2017 IL 120205, ¶ 24. The trial court abuses its discretion where its ruling is fanciful, arbitrary or unreasonable, or where no reasonable person would adopt the trial court's view. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). Additionally, we review whether the factual predicate for the decision was against the manifest weight of the evidence. *In re Marriage of Bates*, 212 Ill. 2d 489, 523 (2004). The trial court, having the benefit of observing the witnesses, is entitled to assess the credibility of the evidence and resolve conflicts therein. *In re Marriage of Sturm*, 2012 IL App (4th) 110559, ¶ 6.

¶ 65 When a MSA provides for unallocated maintenance and support payments, those payments are subject to a statutory right to modification, even if the agreement contains a nonmodification clause.[9] *In re Marriage of Semonchik*, 315 Ill. App. 3d 395, 403 (2000). Sections 510(a) and (a-5), respectively, permit the modification of a child support order or maintenance order "upon a showing of a substantial change in circumstances." 750 ILCS 5/510(a), (a-5) (West 2016). The spouse requesting modification has the burden of demonstrating a substantial change in circumstances has occurred. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 198 (2011).

¶ 66 A trial court deciding whether to terminate or reduce unallocated maintenance and support must consider all factors found in sections 504(a) and 510(a-5) of the IMDMA. *Blum*, 235 Ill. 2d at 41. When the record contains a basis for a particular maintenance award, the trial court is not required to have made explicit findings on each statutory factor. *Id*. The factors found in section 504(a) include the parties' income, property, financial obligations, needs, realistic earning capacity, sources of public and private income, age, occupation, and standard of living during marriage. 750 ILCS 5/504(a) (West 2016). Those factors also include the duration of the marriage, any agreement between the parties and "any other factor that the court expressly finds to be just and equitable." *Id.* In addition, section 510(a-5) directs the court to consider:

> "(1) any change in the employment status of either party and whether the change has been made in good faith;
>
> (2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate*;*
>
> * * *

[9] Paragraph 2(f) of the MSA provided that both monthly and bonus unallocated support payments could generally be modified as to amount but not duration.

(5) the duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage;

(6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage ***;

(7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought;

* * *

(9) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/510(a-5) (West 2016).

¶ 67 i. Expenses and Bad Faith-Communications

¶ 68 Here, the court properly modified the unallocated support award. The record shows that Caren's conduct rendered the entire post-dissolution scheme designed by the parties unworkable and the court was entitled to consider her bad faith conduct. She cites nothing in support of her argument to the contrary.

¶ 69 The dissolution judgment, MSA and custody agreement contemplated that Alan and Caren would be co-parents. The purpose behind sharing equal income was to allow the children to maintain their present life style. The parties acknowledged "that respectful, timely communication is an essential component of an effective decision making process." Aside from emergencies, the parties would "endeavor to respond" to communications within 72 hours.

¶ 70 Caren has not directly responded to, or refuted, the court's finding that "virtually all of Alan's efforts to obtain written consent from Caren for the child related expenses were met with silence, evasive responses and anything but any agreement." She does not address the court's

finding that she gave ambiguous responses which were neither clear approvals nor clear refusals. Furthermore, the financial scheme set forth in the dissolution judgment and incorporated documents clearly required the parties' cooperation to share expenses and income.

¶ 71 Caren has not responded to the court's finding that her practices disregarded the MSA's express purpose of maintaining the children's life style. Nor has she responded to the court's finding that her motive was to thwart Alan's efforts to be joint parents. Furthermore, she ignores the court's finding that she had received more than $1 million in unallocated support from Alan with which to contribute to expenses but instead used those funds for herself.

¶ 72 Caren correctly states that she contributed half of each child's private school tuition. The court acknowledged as much. Yet, the court was not required to find that that those payments, albeit sizable, offset her improper communications with Alan or the court's finding that she "paid virtually none of the child-related expenses since the entry of the judgment." Although Caren's argument states that she "submitted a list of child-related expenses to which Alan had not contributed," that list cannot be found on the pages of the record she cites. See Ill. S. Ct. R. 341(h) (7) (eff. May 25, 2018) (requiring argument to contain supporting citations to the record).

¶ 73 ii. Bad Faith-Employment

¶ 74 The court also found the poorly drafted MSA supported a reasonable inference that the parties were expected to obtain employment and Caren exercised bad faith in trying to do so. Courts construe MSAs as any other contract, ascertaining the parties' intent from the agreement's language. *Blum*, 235 Ill. 2d at 33. In addition, courts must seek a reasonable interpretation and apply a strong presumption against provisions that the parties could have easily included in the agreement. *Prime Group, Inc. v. Northern Trust Co.*, 215 Ill. App. 3d 1065, 1069 (1991). We interpret an MSA *de novo*. *Blum*, 235 Ill. 2d at 33.

¶ 75 We agree with the court's reading of the MSA. Paragraph 2(a) contemplated that Caren would have "gross income." Paragraph 2(g) (1) contemplated that she would have "gross unemployment benefits or income." This suggests the parties did not expect Caren's unemployment to go on indefinitely. Furthermore, the equation for calculating monthly unallocated support and maintenance, paragraph 2(g) (iv), contemplated that Caren would have "gross income from salary and business income." Moreover, paragraph 3(b) specified that the parties were sharing income equally for the children to maintain the lifestyle they enjoyed while their parents were married. During much of the marriage, Caren was employed. Even if the MSA did not require Caren to seek employment, the IMDMA did. The statutory factors include "the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate." 750 ILCS 5/510(a-5)(2) (West 2016); *In re S.D.*, 2012 IL App (1st) 101876, ¶ 58 (stating that a spouse requesting maintenance under the act is subject to an affirmative duty to search for and accept appropriate employment); *In re Marriage of Courtright*, 229 Ill. App. 3d 1089, 1091 (1992) (similar); see also *In re Marriage of Samardzija*, 365 Ill. App. 3d 70, 708 (2006) (observing that maintenance is generally intended to be rehabilitative in nature).

¶ 76 The record also supports the court's finding that Caren did not make "a good faith effort to obtain full time employment commensurate with her education, work history and historical earnings." The court stated, "rather than obtaining full time employment commensurate with her experience and work history, Caren elected to return to school to further her own education and also attempted a startup company in a field she had no experience [in] which earned no income." Although Caren contends the court's criticism of her inability to find work at the beginning of a severe recession was unfair, she ignores that the court disbelieved that she made serious efforts

to find employment. The court found her testimony regarding efforts to obtain employment was "self-serving and not credible." Additionally, the court found she used unallocated support payments from Alan to fund her second master's degree. Her return to school may have been viewed more positively if she was not also disputing her ability to pay for M.D.'s education.

¶ 77 As stated, the trial court, which has the ability to observe the witnesses' demeanor, is in a superior position to assess their credibility. That being said, even the cold record before us does not favor Caren. Her testimony was frequently evasive and defensive. As the court observed, she required more documentation to answer questions when being examined by opposing counsel. See *In re Marriage of Koenigsknecht*, 302 Ill. App. 3d 474, 478 (1998) (stating that a spouse with the means of earning more income cannot use her self-imposed poverty to claim maintenance); *In re Marriage of Courtright*, 229 Ill. App. 3d at 1093 (stating that "a former wife cannot use self-created financial difficulties as a basis for claiming maintenance when she has the ability to earn more income"); see also *In re Marriage of Mayhall*, 311 Ill. App. 3d 765, 770 (2000) (finding that the failure of a spouse receiving maintenance to make good-faith efforts toward financial independence can support a petition to modify maintenance).

¶ 78 Caren argues that the court should have found Alan acted in bad faith by failing to tender half of his full income. Yet, the court found that Alan reasonably and genuinely misunderstood the nature of the RSU proceeds. We also reject Caren's contention, relying on Alan's income tax returns, that he perjured himself in court by overstating the amount of his unreimbursed business expenses between 2011 and 2013. Caren has forfeited this contention by failing to explain how Alan's behavior inside the courtroom is relevant to the modification of unallocated support. *Carlson v. Rehabilitation Institute of Chicago*, 2016 IL App (1st) 143853, ¶ 36. Additionally, she disregards his testimony that the discrepancy related to a house he was required to buy as a

condition of his employment in Arizona. She further fails to recognize that the standards for claiming a tax exemption for expenses may differ from the reality of Alan's actual expenses.

¶ 79 iii. Caren's Employment

¶ 80 Caren next argues that the court improperly considered her contract with Thompson Reuters as a basis to modify the unallocated support award because it was foreseeable that she might work. *In re Marriage of Virdi*, 2014 IL App (3d) 130561, ¶ 30 (stating that courts are reluctant to find a substantial change in circumstances exists where the court previously contemplated and expected the specific financial change in question); *In re Marriage of Reynaud*, 378 Ill. App. 3d 997, 1005 (2008) (similar). Caren's argument would be more compelling, however, if her recent employment was the only basis for modification.

¶ 81 We categorically reject her suggestion that it was inconsistent to find her failure to work and her ultimate employment were both relevant factors supporting modification. Caren's failure to make a good faith effort to work, much like her lack of appropriate communication, undermined the entire post-dissolution scheme designed by the parties. It undermined the purpose of allowing the children to maintain their lifestyle and supported the court's determination that the parties' roles as decision makers, as well as their financial responsibilities, must be changed. Caren's ultimate employment, however, impacted what the parties' specific financial responsibilities would be. We find no error.

¶ 82 iv. The Children's Education

¶ 83 Caren also argued that the court improperly relied on M.D.'s emancipation as a basis for modifying the unallocated support award because his eventual emancipation was contemplated when the marriage was dissolved. Once again, Caren's argument would be more compelling if M.D.'s emancipation was the sole basis for modification. *Cf. In re Marriage of Reynaud*, 378 Ill.

App. 3d at 1005 (finding that the trial court knew college expenses would decrease over time); *In re Marriage of Virdi*, 2014 IL App (3d) 130561, ¶ 30 (finding a former spouse's withdrawals from her retirement account resulted from her own lack of financial planning and was not a change in circumstances sufficient to modify maintenance). We find it reasonable that the court considered the entire family's circumstances.

¶ 84 Caren further argues that the court improperly considered C.D.'s entry into public school because that factor impacted both of the parties' finances. Yet, the impact on both parties' finances is precisely what made it a particularly appropriate factor to consider.

¶ 85 v. Statutory Requirements

¶ 86 We further reject Caren's assertion that "the circuit court did not consider *any* of the statutory factors in modifying Caren's unallocated support." (Emphasis added.) The court expressly considered Caren's change in employment status, her efforts to become self-supporting, the property awarded to each party, Caren's increase in income, Alan's income, each party's needs, the standard of living established during the marriage and the parties' agreement.

¶ 87 Caren suggests that section 504(b-2) required the court to make specific findings on every statutory factor that a court is to consider in awarding maintenance. Section 504(b-2)(1) states, however, that a court awarding maintenance "shall include references to each *relevant* factor set forth in subsection (a) of this Section." (Emphasis added. 750 ILCS 5/504(b-2) (1) (West 2016). Caren has failed to identify any particularly relevant factor that the court did not consider. Additionally, the court explicitly stated that it was deviating from statutory guidelines in setting maintenance because otherwise, the amount of the award would greatly exceed Caren's expenses. See 750 ILCS 5/504(b-2) (2) (West 2016); see also *In re Marriage of Susan*, 367 Ill. App. 3d 926, 930 (2006).

¶ 88 Caren further argues that the modification here is unjust because she had "bargained away her right to indefinite maintenance in exchange for 6 years of income-sharing." Caren asserts that her "total annual support was reduced from more than $300,000 per year to approximately $66,000 per year." These contentions are telling.

¶ 89 The prior income sharing and unallocated maintenance and support payments were supposed to have been for the benefit of not only herself, but her children. While Caren argues that she has not received the benefit of her bargain, we remind her that, per the court's findings, Alan did not receive the benefit of his bargain either. He received neither cooperation and proper communication, nor a joint parent contributing her own salary to satisfy their children's expenses. Moreover, Caren did not have an absolute right to maintenance. *In re Marriage of Cantrell*, 314 Ill. App. 3d 623, 629 (2000). Although she states that the order resulted in her owing Alan "hundreds of thousands of dollars" and had the practical effect of vitiating "the hundreds of thousands of dollars that Alan had wrongfully withheld from her," she ignores that going forward, her financial responsibility toward the children has been dramatically reduced. We cannot agree that she has been "thrown to the wolves."

¶ 90 C. Denial of Motion to Reopen Proofs

¶ 91 Next, Caren asserts the trial court erred by refusing to reopen proofs to hear evidence of the parties' current financial circumstances. In making that decision, a court should consider whether (1) the movant provided a reasonable excuse for failing to submit evidence sooner, (2) granting the motion would surprise or unfairly prejudice the movant's opponent, and (3) "the evidence is of the utmost importance to the movant's case." *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365, 389 (2004). Greater liberty should be accorded to reopening proofs in bench trials. *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶ 55. That being said, we will not

disturb the court's decision absent a clear abuse of discretion. *Lyons v. Lyons*, 228 Ill. App. 3d 407, 412 (1992).

¶ 92 We find no abuse of discretion. Caren provided insufficient information regarding her loss of employment. She informed the court that she lost her employment and was attempting to establish a new career but never specified when her employment ended. She also neglected to mention who terminated that employment relationship.[10] As Alan observes, Caren did not make an offer of proof as to what specific evidence she would tender if proofs were reopened. *In re Parentage of I.I.*, 2016 IL App (1st) 160071, ¶ 47 (stating that the reviewing court could not find respondent's new evidence would have been of the utmost importance to his case where he failed to specify what evidence he would have introduced aside from his own testimony).

¶ 93 Although Caren states that she lost her employment after the evidentiary hearing, she has not explained why she could not have informed the court of this change before the court entered its decision so many months later. Caren did not voluntarily submit any updated financial information before the court entered its decision. Neither the record nor Caren's argument shows she had a reasonable excuse for failing to submit evidence sooner. Additionally, granting the motion would unfairly prejudice Alan. As the trial court stated, the parties needed finality. While Caren may have been willing to forgo finality, it would be unfair to surprise Alan with new evidence more than a year after proofs had closed.

¶ 94 Given the vague nature of Caren's assertion that she had lost her employment, the record does not show the evidence was of the utmost importance to Caren's case either. See *In re Marriage of Weinstein*, 128 Ill. App. 3d 234, 249 (1984) (finding the court did not abuse its

[10] Moreover, the misleading motion filed by Caren suggested that someone had paid $30,000 toward M.D.'s tuition *on Caren's behalf*. The record shows that in reality, however, M.D. received a $30,000 scholarship based on his own merit, albeit through one of Caren's connections.

discretion in declining to reopen proofs to show evidence that one former spouse lost her job where, among other things, the record indicated the loss of employment was a mere temporary setback against several years of professional experience). Furthermore, as the trial court stated, Caren could always file a new motion to modify support. We find no abuse of discretion. See *In re Marriage of Drone*, 217 Ill. App. 3d 758 (1991) (finding that the court did not abuse its discretion in declining to reopen proofs for a spouse to show an approaching loss of employment where reopening proofs would cause undue delay, the spouse could always file a petition to modify the judgment, and there was no reason to believe he could not find alternative employment); *Cf. In re Marriage of Lehr*, 217 Ill. App. 3d 929, 939 (1991) (stating outside the context of reopening proofs that the trial court should have all relevant facts before it to assess the parties' current circumstances).

¶ 95 Moreover, we categorically reject Caren's disingenuous contention that the trial court did not address her argument that the financial information considered by the court was over a year old. The court stated as follows:

> "And believe me, when it was you that pointed out that it took a year or so since I closed proofs before I ruled.
>
> I have to tell you, you left me, both of you, with a mountain of boxes of stuff to go through. In this case, regardless of the parties' differences, these kids are doing fine and they are doing okay. I have a lot more cases where I have risk of harm to children, and those are always a priority to me.
>
> And so if I've got, to be very candid for the record, two rich people fighting over who owes who what, it is not as high a priority as my risk of harm to children cases.

> So if there is any concern with this amount of time that passed, that's the main reason why it took so long."

We admonish counsel, once again, not to misstate the record in the future.

¶ 96 It is well settled that trial courts have the inherent authority to control their dockets. *In re Marriage of Faber*, 2016 IL App (2d) 131083, ¶ 13. This includes prioritizing the cases before it. See *In re Asbestos Cases*, 224 Ill. App. 3d 292, 297 (1992). We do not fault the circuit court for ensuring that the parties' numerous pending matters, which pertained to their conduct and their compliance with financial obligations, would not interfere with the court's obligation to protect the physical safety of other children as well.

¶ 97 Finally, Caren misrepresents in her reply brief that section 413 of the IMDMA now requires judgments to issue within 60 day or, for good cause, within 90 days, of the close of proof. On the contrary, that statutory time frame applies to "[a] judgment of dissolution of marriage or of legal separation or of declaration of invalidity of marriage," none of which are at issue here. 750 ILCS 5/413(a) (West 2016).

¶ 98 D. Attorney Fees

¶ 99 Next, Caren asserts the trial court erroneously awarded attorney fees to Alan, instead of Caren, under section 508(b) of the IMDMA. Section 508(b) states:

> "In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party. *** If at any time a court finds that a hearing under this Act was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to

> the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, *harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation.*" (Emphasis added.) 750 ILCS 5/508(b) (West 2016).

Additionally, no finding of contempt is required to impose fees under section 508(b). *In re Marriage of Berto*, 344 Ill. App. 3d 705, 717 (2003). We review the court's decision to award attorney fees for an abuse of discretion. *In re Marriage of Heroy*, 2017 IL 120205, ¶ 13.

¶ 100 Here, the trial court reasonably awarded Alan attorney fees because Caren needlessly increased litigation by failing to fulfill her obligations as a co-parent. The record supports the court's findings that Caren routinely failed to respond to Alan's communications or responded with equivocal answers. Caren's tactics before and during litigation were designed to unnecessarily increase litigation. Fortunately for Caren, the court declined to find her in contempt. Yet, this did not preclude the court from determining an award of fees under section 508(b) was required.

¶ 101 Caren argues the court abused its discretion in awarding Alan fees because his recovery was minor when compared to her own. Yet, she has cited no legal authority supporting this comparative approach. In any event, the court could find that lengths she required Alan to go to for a smaller sum only added to the egregiousness of her behavior. Furthermore, the record supports the court's determination that Alan was reasonably mistaken in his belief that proceeds from RSUs and cash retention awards were not subject to income sharing. The transcript shows that the nature of RSUs and how they are transformed into proceeds was complicated and confused even the attorneys. Alan had believed that such sums were taken care of through the property distribution.

¶ 102 We are not persuaded by Caren's contention that she was entitled to fees because she spent years trying to force Alan to tender his full income. We reiterate that paragraph 2(g) required such income to be considered in conjunction with Alan's other income as well as Caren's income at a true up to determine the monthly unallocated amounts to be paid the *following* year. As stated, Alan could not have known how additional sums effected the amount of his monthly payments until Caren participated in the requisite true ups or the court determined that amount. We find no error.

¶ 103 E. Bat Mitzvah

¶ 104 Finally, Caren asserts that the court misinterpreted the parties' MSA to require that she contribute to the bat mitzvah expenses. She argues that the MSA included no provision for the bat mitzvah party and, even if it fell within one of the listed expense categories, she did not provide express written permission for incurring that expense. Instead, she expressly refused to share in the cost of the bat mitzvah party.

¶ 105 Paragraph 3a of the MSA stated that the parties would share not only half of the enumerated expenses, but would also share "other child related expenses, including but not limited to camp, tutors, placement exams, college application fees, and the like." See *Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶ 24 (stating that the language, "including but not limited to" generally means the list could include other items not specified). The list was not exhaustive. Additionally, paragraph 3(b) stated that the parties intended to maintain "other child-related expenses as they have been accustomed to during the marriage." Thus, "other child related expenses" included any type of benefit the children would have been accustomed to prior to the dissolution judgment. Because the children engaged in religious

activities before the dissolution, Alan and Caren were to share expenses for religious activities after the dissolution as well.

¶ 106 Caren nonetheless argues that she never agreed to be financially responsible for bat mitzvah expenses, relying on paragraph 3(b)'s clause providing that neither party "shall incur any expense for which either expects payment from the other without the express written permission of the other *to incur such expense*." (Emphasis added.) Based on that language, Alan needed Caren's permission to incur the expense, not Caren's unequivocal agreement to pay for it. While Caren states it is undisputed that she at all times refused to incur expenses for a bat mitzvah party, the trial court did not make that finding. Moreover, Caren gave written permission in the custody agreement itself.

¶ 107 Caren agreed therein that the parties would "celebrate" C.D.'s bat mitzvah together. While that the custody agreement did not define "celebrate," any ambiguity is resolved by the parties' conduct with respect to M.D.'s bar mitzvah, which included a party. The parties' prior conduct shows that when they signed the custody agreement, "celebrate" contemplated that C.D. would have a party. Furthermore, Caren has never suggested any alternative meaning of "celebrate." Because Caren gave express written permission to incur expenses for a bat mitzvah party in the custody agreement itself, we need not address the parties' later correspondence. Caren's attempts to disclaim financial responsibility for a bat mitzvah party via e-mail were ineffective.[11]

¶ 108 We further reject Caren's contention that the trial court, having excused her from contributing to braces absent her written consent, should have also excused her from contributing

[11] We also find the MSA anticipated that the parties would give or withhold consent to incur expenses in good faith.

to bat mitzvah expenses absent her written consent. As stated, Caren gave written consent to a bat mitzvah party in the custody agreement. In any event, the braces expense was subject to a different, albeit similar, provision of the MSA. Moreover, that expense involved a different communications between the parties.

¶ 109 III. Conclusion

¶ 110 Having reviewed the numerous assertions and arguments raised in this appeal, we find no error. Accordingly, we affirm the trial court's judgment.

¶ 111 Affirmed.